

## CHAPTER 10 VOCATIONAL REHABILITATION SERVICES

[Prior to 7/1/87, see Blind, Commission for[160] Ch 2 and rule 3.3]

[Prior to 9/21/88, see Blind, Division for the[423] Ch 10]

**111—10.1(216B) Function.** Vocational rehabilitation services assist eligible individuals to achieve an employment outcome consistent with their individual strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

**111—10.2(216B) State plan.** The state plan for vocational rehabilitation of the blind of Iowa is developed by the department pursuant to federal regulations and submitted to the United States Department of Education, rehabilitation services administration. The state plan delineates the scope of vocational rehabilitation services to individuals and to groups, ensures that written policies are maintained, and provides guidelines for expenditure of funds.

In accordance with Section 361.29 of the federal regulations, reports of statewide studies and evaluations are available to the public for review.

**111—10.3(216B) Application procedures.** Persons desiring vocational rehabilitation services should contact the department and must complete the application process. An individual is considered to have submitted an application when the individual or the individual's representative, as appropriate, (1) has completed and signed an agency application form; (2) has provided information necessary to initiate an assessment to determine eligibility and priority of services; and (3) is available to complete the assessment process.

### **111—10.4(216B) Eligibility.**

**10.4(1)** Eligibility for vocational rehabilitation shall be determined upon the presence of four basic conditions: (1) the existence of blindness as defined in rule 111—1.4(216B); (2) the existence of blindness constitutes or results in a substantial impediment to employment; (3) the individual intends to achieve an employment outcome consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice; and (4) the applicant requires vocational rehabilitation services to prepare for, secure, retain, or regain employment.

Applicants who meet the eligibility requirements stated in the paragraph above will be presumed to be able to benefit from vocational rehabilitation services in terms of an employment outcome, unless the department can prove with clear and convincing evidence that the applicant is incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to the severity of the applicant's disability.

Any applicant who has been determined eligible for social security benefits under Title II or Title XVI of the Social Security Act is (1) presumed eligible for vocational rehabilitation services, and (2) considered an individual with a significant disability.

No duration of residence requirement is imposed that excludes from services any applicant who is present in the state. No applicant or group of applicants is excluded or found ineligible solely on the basis of the type of disability. The eligibility requirements are applied without regard to the age, gender, race, color, creed, or national origin of the applicant; type of expected employment outcome; source of referral; or the particular service needs or anticipated cost of services required by an applicant or the income level of an applicant or applicant's family.

Nothing in this rule is to be construed to create an entitlement to any vocational rehabilitation service.

**10.4(2)** Whenever changed circumstances, such as a decrease in fiscal or personnel resources or an increase in its program costs, indicate that the department may no longer be able to provide a full range of services, as appropriate, to all eligible applicants, the department will invoke an order of selection policy based upon Section 361.36 of the federal regulations.

### **111—10.5(216B) Services.**

**10.5(1)** Vocational rehabilitation services are any services described in an individualized plan for employment necessary to assist an individual in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual.

Services may include the following: assessment for determining eligibility and priority for services; assessment for determining vocational rehabilitation needs; vocational rehabilitation counseling and guidance; referral and other services necessary to secure needed services from other agencies and to advise individuals about the client assistance program; physical and mental restoration; vocational and other training services, including personal and vocational adjustment training; maintenance; transportation; vocational rehabilitation services to family members; interpreter services for individuals who are deaf-blind; reader services; rehabilitation teaching services; orientation and mobility services; job-related services, including job search and placement assistance, job retention services, follow-up services and follow-along services; supported employment services; personal assistance services; postemployment services; occupational licenses, tools, equipment, initial stocks and supplies; rehabilitation technology; transition services; technical assistance and other consultation services to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome; and provision of other goods and services determined necessary to achieve an employment outcome.

**10.5(2)** Services for groups of individuals who are blind. The department may also provide for the following vocational rehabilitation services for the benefit of groups of individuals who are blind: (1) The establishment, development or improvement of a public or other nonprofit community rehabilitation program that is used to provide vocational rehabilitation services that promote integration and competitive employment including, under special circumstances, the construction of a facility. (2) Telecommunication systems that have the potential for substantially improving vocational rehabilitation service delivery methods and developing appropriate programming to meet the particular needs of individuals who are blind, including telephone, television, video description services, satellite, tactile-vibratory devices, and similar systems, as appropriate. (3) Special services to provide nonvisual access to information for individuals who are blind, including the use of telecommunications, braille, sound recordings, or other appropriate media; tactile materials for individuals who are deaf-blind; and other special services that provide information through tactile, vibratory, auditory, and visual media. (4) Technical assistance and support services to businesses that are not subject to Title I of the Americans with Disabilities Act of 1990 and that are seeking to employ individuals who disabilities. (5) In the case of any small business enterprise operated by individuals with significant disabilities under the supervision of the department, including enterprises established under the Randolph-Sheppard program, management services and supervision provided by the department along with the acquisition by the department of vending facilities or other equipment, initial stocks and supplies, and initial operating expenses. (6) Other services that promise to contribute substantially to the rehabilitation of a group of individuals but that are not related directly to the individualized plan for employment of any one individual. (7) Consultative and technical assistance services to assist educational agencies in planning for the transition of students with disabilities from school to postschool activities, including employment.

**10.5(3)** Joint planning between an eligible individual and staff will be employed in the development of the individual plan for employment in order to determine which specific services may be needed and to ensure that the individual has the opportunity to make an informed choice regarding employment goals and objectives. The following factors may be taken into account in arriving at a decision as to what services will be provided: the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

**111—10.6(216B) Consideration of comparable services and benefits.**

**10.6(1)** Prior to providing any vocational rehabilitation services, except those services listed in subrule 10.6(3), to an eligible individual or to members of the individual's family, the department must determine whether comparable services and benefits exist under any other program and if those services and benefits are available to the individual. Full consideration is given to any comparable service or benefit available to an eligible blind person under any program, except for grants or awards from organizations of the blind.

**10.6(2)** To the extent that an individual is eligible for comparable services or benefits, they are utilized insofar as they are adequate and do not interrupt or delay: (1) the progress of the individual toward achieving the employment outcome identified in the individualized plan for employment or an immediate job placement; or (2) the provision of vocational rehabilitation services to any individual who is determined to be at extreme medical risk.

**10.6(3)** The following services are exempt from a consideration of comparable services and benefits under subrule 10.6(1) above: (1) assessment for determining eligibility and vocational rehabilitation needs; (2) counseling and guidance; (3) referral services to other agencies; (4) job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services; (5) rehabilitation technology services; and (6) postemployment services.

**10.6(4)** The consideration of comparable services and benefits under any program does not apply if such a consideration would delay the provision of vocational rehabilitation services to any individual who is determined to be at extreme medical risk as defined by rule 111—1.4(216B), based on medical evidence provided by an appropriate qualified medical professional; or an immediate job placement would be lost due to a delay in the provision of comparable services and benefits.

**10.6(5)** In the event that severe revenue shortages make budget reductions necessary, the department may invoke a limitation on payment of tuition each semester to a rate no greater than the maximum tuition rate effective at institutions operated by the Iowa board of regents for each semester of the individual's enrollment. When it is necessary to invoke this limitation with general notice to the public and to individuals potentially affected, exceptions may be made in cases in which a reasonable necessity for a waiver can be demonstrated, the individual's counselor recommends a waiver, and the program administrator approves the waiver before the individual's enrollment. In no case, however, shall this rule be construed as discouragement of an individual's attending private or out-of-state institutions when utilization of other available funds makes it possible to do so.

**111—10.7(216B) Termination of services.**

**10.7(1)** A decision to terminate vocational rehabilitation services shall be made only after providing an opportunity for full consultation with the individual or, if appropriate, with the individual's representative.

**10.7(2)** The individual will be informed in writing of the reasons for the termination of services; furnished information on how the individual may appeal the decision as provided in rule 10.8(216B); and provided with a description of the services of the Iowa client assistance program and how to contact that program.

**10.7(3)** For those individuals who have been determined incapable of achieving an employment outcome, their circumstances will be reviewed annually unless they have refused services, are no longer in the state, their whereabouts are unknown, or they have a medical condition which is rapidly progressive or terminal.

**111—10.8(216B) Dispute resolution process.** This rule defines the procedures under which the dispute resolution process, required by the Rehabilitation Act of 1973, shall be conducted by the department.

**10.8(1) Definitions.**

*“Administrative review”* means a procedure by which the department may provide an opportunity for an applicant or eligible individual to express and seek remedy for dissatisfaction with a decision regarding the furnishing or denial of services.

*“Formal hearing”* means a procedure whereby an applicant or eligible individual who is dissatisfied with the findings of an administrative review or mediation concerning the furnishing or denial of services may request a timely review of those determinations before an impartial hearing officer.

While the department encourages the use of the administrative review process to resolve grievances, the administrative review process is not to be used as a means to delay mediation or a formal hearing before an impartial hearing officer unless the parties jointly agree to a delay. An applicant or eligible individual may elect to proceed directly either to mediation or to the formal hearing process. The department will not suspend, reduce, or terminate vocational rehabilitation services to any applicant or eligible individual throughout the administrative review, mediation or formal hearing process before a final agreement or decision is made, unless the applicant or eligible individual or, as appropriate, the applicant’s or eligible individual’s representative so requests, or the department has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the applicant or eligible individual.

*“Mediation”* means an alternative which an applicant or eligible individual may choose if the applicant or eligible individual is dissatisfied with the findings of an administrative review concerning the furnishing or denial of services.

**10.8(2) Administrative review.** An applicant or eligible individual may request review of a decision regarding furnishing or denial of services with which the applicant or eligible individual is dissatisfied by submitting a letter to the program administrator of field operations.

a. The program administrator shall acknowledge receipt of the letter and arrangements shall be made for the administrative review to be held at a mutually convenient date, time, and place which shall be within ten days after receipt of the request for review. The applicant or eligible individual shall also be notified of the applicant’s or eligible individual’s right to obtain assistance through the Iowa client assistance program.

b. The administrative review shall consist of review of the case file and any other documentation involved in the subject matter of the review; interviews with the service specialists for the blind and any others directly involved with the subject matter of the review; and an interview with the applicant or eligible individual or, as appropriate, a representative of the applicant or eligible individual.

c. The program administrator shall issue a written decision within five days of the review. The decision shall set forth the issue, principle, and relevant facts established during the review; pertinent provision of law, administrative rule or department policy; and the reasoning upon which the decision is based. The letter transmitting the decision shall advise the applicant or eligible individual that the applicant or eligible individual shall inform the program administrator within seven days that either: (1) the applicant or eligible individual accepts the decision; or (2) the applicant or eligible individual does not accept the decision and wishes to proceed either to mediation or to a formal hearing.

d. A record of the decision and any action resulting from the decision shall be sent to the applicant or eligible individual by mail. The decision and a record of any action resulting from the decision shall be entered into the case file.

**10.8(3) Mediation.** An applicant or eligible individual who is dissatisfied with the findings of an administrative review or who has elected to bypass the administrative review process may request mediation by submitting a letter to the program administrator. This letter must be received within seven days of the date of determination of the administrative review, if an administrative review has been conducted.

*a.* The program administrator shall acknowledge receipt of the request for mediation and shall make arrangements for mediation to occur within 30 days of the request to initiate the dispute resolution process. The date, time, and place shall be mutually agreeable to all parties. The applicant or eligible individual shall be notified in writing of the right to submit evidence or information to support the applicant's or eligible individual's position and to obtain representation to be present during the mediation sessions. The applicant or eligible individual shall also be notified of the applicant's or eligible individual's right to obtain assistance through the Iowa client assistance program. All mediation sessions shall be held in a timely manner and shall be concluded within 45 days of the date that the applicant or eligible individual initiated the dispute resolution process, unless an extension of this time is agreed upon by all parties. The department will pay costs for the mediator and, when appropriate, transportation, meals and lodging expenses for the applicant or eligible individual which are directly associated with the mediation process. The program administrator will determine who will represent the department during mediation sessions.

*b.* The department, in conjunction with the Iowa department of education, division of vocational rehabilitation services, will maintain a list of individuals who are impartial, qualified mediators and knowledgeable in laws (including regulations) relating to the provision of vocational rehabilitation services. Potential mediators will be identified by the division of vocational rehabilitation services utilizing three primary sources: mediators used by the department of education, the Iowa peace institute, and the Iowa extension service. The department and the division of vocational rehabilitation services will train potential mediators in the laws and regulations governing vocational rehabilitation.

*c.* A mediator will be selected at random or by agreement of the director and the applicant or eligible individual or, as appropriate, the applicant's or eligible individual's representative from the list described in paragraph "b."

*d.* Discussions which occur during the mediation process shall be confidential and shall not be used as evidence in any subsequent due process hearing or civil proceeding.

*e.* All agreements reached by the parties to the dispute in the mediation process shall be set forth in a written mediation agreement. This agreement shall be prepared by the mediator and mailed within seven days to all parties.

*f.* Either party to the dispute may request a formal hearing. This request must be in writing and must be submitted to the director within seven days of the date of the written mediation agreement.

**10.8(4) Formal hearing.** An applicant or eligible individual who is dissatisfied with any determinations made concerning the furnishing or denial of vocational rehabilitation services, or the findings of an administrative review or mediation if an administrative review or mediation took place, may request a formal hearing by submitting a letter to the director.

*a.* The director shall acknowledge receipt of the request and make arrangements for a formal hearing to be held within 60 days of the request of the applicant or eligible individual to initiate the dispute resolution process at a date, time, and place mutually agreeable to both parties. The applicant or eligible individual shall also be notified of the right to have a representative present at the formal hearing and to seek assistance through the Iowa client assistance program. Reasonable time extensions shall be granted for good cause shown at the request of a party or at the request of both parties.

b. The impartial hearing officer shall be an individual who is not an employee of a public agency other than an administrative law judge, hearing examiner, or employee of an institution of higher education. (An individual is not an employee of a public agency solely because the individual is paid by that agency to serve as a hearing officer.) The impartial hearing officer: (1) is not a member of the commission for the blind; (2) has not been involved in previous decisions regarding the vocational rehabilitation of the applicant or eligible individual; (3) has knowledge of the delivery of vocational rehabilitation services, the state plan, and the federal regulations and state rules governing the provision of services; (4) has received training with respect to the performance of official duties; and (5) has no personal, professional, or financial interest that would be in conflict with the hearing officer's objectivity. The director may also request that other designated department personnel be present at the formal hearing. At the request of the applicant or eligible individual, a representative of the applicant or eligible individual and a representative of the Iowa client assistance program may also be present. Any of these persons shall have the opportunity to present relevant evidence.

c. An impartial hearing officer must be selected on a random basis or by agreement between the director and the applicant or eligible individual or, as appropriate, the applicant's or eligible individual's representative from a pool of persons qualified to be an impartial hearing officer.

d. The impartial hearing officer shall inform those present of the confidentiality of matters discussed. The proceedings shall be recorded and, if necessary, transcribed.

e. Within 30 days of the completion of the formal hearing, the decision of the impartial hearing officer shall be mailed to the applicant or eligible individual or, if appropriate, the applicant's or eligible individual's representative, and the director. A representative of the Iowa client assistance program who has attended the formal hearing shall also receive a copy of the decision. The applicant or eligible individual may receive a copy of the tape-recorded transcript of the hearing upon written request to the director.

The decision of the impartial hearing officer shall be based upon the provisions of the approved state plan, the federal Vocational Rehabilitation Act of 1973, federal vocational rehabilitation regulations, and state rules and policies.

f. The decision of the impartial hearing officer is final.

**10.8(5) Documents provided.** Transcripts, notices, responses, and other documents which are an integral part of the dispute resolution process shall be provided to involved parties in standard print format. An applicant or eligible individual, or representative of an applicant or eligible individual, or other involved party may request provision of documents in the alternative medium of braille, cassette tape, or large-type format. Documents in the alternative medium shall be provided in a timely manner.

**11—10.9(216B) Applicant's and eligible individual's rights.** The counselor/teacher must inform the applicant or eligible individual of the applicant's or eligible individual's rights as follows:

**10.9(1)** A written statement of rights, which sets forth the department's policies and practices with regard to administrative review, fair hearing, confidentiality of records and nondiscrimination, shall be provided to the applicant as a part of the application process.

**10.9(2)** When an applicant is determined ineligible to receive vocational rehabilitation services, the applicant shall receive written notification of the right to appeal and information concerning services available through the Iowa client assistance program.

**10.9(3)** The individual plan for employment will include a statement that the individual has been informed of the department's policies regarding administrative review, fair hearing, confidentiality of records and nondiscrimination.

**10.9(4)** Upon termination of services through the standard case closure procedure, the individual shall be given a written statement of the right to appeal the termination, including information about services available through the Iowa client assistance program.

**10.9(5)** When disagreement occurs, staff shall verbally inform the applicant or individual of the right to appeal and provide information about services available through the Iowa client assistance program.

**111—10.10(17A) Forms.** The following forms are used by the vocational rehabilitation services program:

1. Application for rehabilitation services—used for application for vocational rehabilitation services from the department. Also contains statement of compliance with the Civil Rights Act of 1964 and release of information form.

2. Individual plan for employment (IPE)—used by the counselor/teacher and individual to develop a blind person's program for rehabilitation. Printed on the form are the following statements: mutual agreement and understanding between individual and counselor; department's program responsibilities; individual responsibilities; review and evaluation of progress toward objectives and goal; and individual rights and remedies. In addition, the IPE provides for mutual development of a vocational goal, summary of planned services, accepted criteria for review and evaluation purposes and individual acceptance and response.

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